



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10-210; DA 12-430]

Relay Services for Deaf-Blind Individuals

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver of requirement.

SUMMARY: In this document, the Commission conditionally waives the requirement for National Deaf Blind Equipment Distribution Program (NDBEDP) certified programs to submit reimbursement claims only once every six months, to permit certified programs to submit reimbursement claims as frequently as monthly. The Commission waives this requirement for good cause shown, to reduce the financial burden on programs that the Commission certifies to participate in the NDBEDP, and to better enable selected participants to fully meet the needs of eligible low-income, deaf-blind individuals in a timely manner.

DATES: This document is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except the modified reporting requirement in 47 CFR 64.610(f)(2), published at 76 FR 26641, May 9, 2011, has not been approved by the Office of Management and Budget (OMB). The modified information collection requirement shall become effective when the Commission publishes a document in the Federal Register announcing OMB approval and the effective date of the requirement.

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-2075 or e-mail Rosaline.Crawford@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document DA 12-430, adopted March 20, 2012, and released March 20, 2012, in CG Docket No. 10-210.

The full text of document DA 12-430 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc.,

Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or Internet: www.bcpweb.com. Document DA 12-430 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/headlines.html> and at <http://www.fcc.gov/cgb/dro/cvaa.html>.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

Document DA 12-430 contains a modified information collection requirement. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the modified information collection requirement contained in document DA 12-430 as required by the Paperwork Reduction Act (PRA), Pub. L. 104-13 in a separate published Federal Register Notice (Notice). Public and agency comments are due on or before **May 29, 2012**. See Information Collection Being Reviewed by the Federal Communication Commission, Notice, published at 77 FR 18813, March 28, 2012. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, the Commission previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” See 44 U.S.C. 3506(c)(4). In the present document, the Commission has assessed the effects of the rules for the NDBEDP pilot program and finds that the collection of information requirements will not have a significant impact on small business concerns with fewer than 25 employees.

CONGRESSIONAL REVIEW ACT

The Commission will not send a copy of document DA 12-430 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the conditional waiver adopted in document DA 12-430 does not amend the Commission’s rules.

SYNOPSIS

1. On April 4, 2011, in accordance with the Twenty-First Century Communications and Video Accessibility Act (CVAA), Pub. L. 111–260, 124 Stat. 2751 (2010), the Commission adopted a Report and Order establishing the National Deaf-Blind Equipment Distribution Program (NDBEDP). See Relay Services for Deaf-Blind Individuals, Report and Order, document FCC 11-56, published at 76 FR 26641, May 9, 2011 (NDBEDP Pilot Program Order). The goal of the NDBEDP is to ensure that low-income individuals who are deaf-blind receive the equipment they need to effectively access telecommunications services, Internet access services, and advanced communications services. The CVAA authorizes the Commission to allocate up to \$10 million annually from the Interstate Telecommunications Relay Services Fund (TRS Fund) for this nationwide equipment distribution effort. See 47 U.S.C. 620(c). The Commission will certify and provide funding to one entity in each state for the purpose of distributing communications equipment to low-income individuals who are deaf-blind.

2. NDBEDP certified programs may seek reimbursement of costs from the TRS Fund up to the funding allocation for the state, for the equipment they distribute, the reasonable costs of providing related services, and the costs associated with administering these programs. In the NDBEDP Pilot Program Order, the Commission adopted a funding mechanism that allows for reimbursement for these authorized costs every six months. See 47 CFR 64.610(f)(2) of the Commission’s rules. To obtain reimbursement for authorized costs, certified programs must provide the Commission with documentation and a reasonably detailed explanation of the costs actually incurred during the prior six-month period of the funding year.

Frequency of Reimbursement Claims

3. The Commission announced that it would accept applications through November 21, 2011, from programs interested in receiving certification to participate in the NDBEDP pilot program. See FCC Announces 60-Day Period to Apply for Certification to Participate in the National Deaf-Blind Equipment Distribution Program, Public Notice, document DA 11-1591, released September 22, 2011. In response, the Commission received 58 applications from entities representing each of the 50 states, the District of

Columbia, Puerto Rico, and the Virgin Islands. All applications are from state or local government agencies or non-profit entities.

4. More than half of the applications received include a request for the Commission to permit claims for reimbursement of NDBEDP expenses more frequently than once every six months. Many of the applicants assert that the inability to receive compensation more frequently than once every six months will compromise significantly their ability to staff their programs, purchase equipment, actively conduct program outreach, and handle other required tasks. Accordingly, they claim that the once every six months reimbursement interval will severely and profoundly limit their ability to serve eligible low-income, deaf-blind individuals in a timely manner. Several applicants also assert that permitting more frequent claims for reimbursement is necessary to maintain financial stability and to ensure timely payments to vendors and contractors. Still others raise questions about their ability to participate in the NDBEDP program at all if not permitted to receive compensation on a more frequent basis, especially given their non-profit status, the sizeable expenditures they must incur for covered equipment, and recent budget reductions experienced by state and local government agencies that make reliance on regular funding critical to their participation in this program.

5. Generally, the Commission may waive any provision of its rules on its own motion for good cause shown. See 47 CFR 1.3 of the Commission's rules. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), affirmed, 459 F.2d 1203 (D.C. Cir. 1972). In sum, a waiver of our rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

6. For good cause shown, and to reduce the financial burden on programs that the Commission certifies to participate in the NDBEDP and better enable selected participants to fully meet the needs of eligible low-income, deaf-blind individuals in a timely manner, the Commission conditionally waives its rules to permit such programs to submit claims for reimbursement from the TRS Fund more frequently.

The Commission finds persuasive applicants' assertions that a six-month reimbursement cycle will impose a hardship that could prevent many entities from participating in the NDBEDP. Many of the non-profit and state or local programs that have applied for certification report that they operate on limited funding that will be strained if forced to wait a full six months for compensation. This is especially true given the high costs of equipment generally required by individuals who are deaf-blind. The Commission finds that the large upfront expenses needed for such equipment justifies a waiver to permit more frequent reimbursement.

7. To be compensated for equipment distributed and services rendered under the NDBEDP pursuant to this waiver, each certified entity must comply with certain conditions. Specifically, each certified entity that wishes to take advantage of this waiver will be permitted to elect a reimbursement schedule on either a monthly or quarterly basis. Such entity must notify the TRS Fund Administrator of its election at the start of each Fund Year, and maintain that schedule for the duration of the Year. Entities electing to seek reimbursement on a monthly or quarterly basis also will be required to submit documentation and a reasonably detailed explanation of costs incurred within 30 days after the end of each month or quarter, respectively, of the Fund Year (July 1 through June 30). See 47 CFR 64.610(f)(2) of the Commission's rules. In either case, the TRS Fund Administrator and the NDBEDP Administrator shall review the costs submitted and may request supporting documentation to verify the expenses claimed. See 47 CFR 64.610(f) of the Commission's rules. Entities that do not take advantage of this waiver do not need to so notify the Fund Administrator, but will be required to submit documentation and a reasonably detailed explanation of their costs incurred within 30 days after the end of each six-month period of the funding year, as required by the Commission's rules. See 47 CFR 64.610(f)(2) of the Commission's rules. In each case, costs submitted must be for those costs actually incurred during each preceding one-, three-, or six- month period.

8. The Commission further notes that the waiver granted in document DA 12-430 will be for the duration of the NDBEDP pilot program. The purpose of establishing the NDBEDP initially as a pilot program is to provide the flexibility needed to enable certified programs to structure their distribution and

service delivery systems to effectively meet the needs of their participants. This flexibility is expected to result in a variety of equipment distribution and service delivery models that could serve as the foundation for establishment of the permanent NDBEDP. The Commission concludes that allowing certified entities to receive the needed funding in a timely manner will better enable such entities to make their programs effective and sustainable, which, in turn, will help inform future Commission decisions regarding a permanent NDBEDP that furthers the public interest.

ORDERING CLAUSES

9. Pursuant to sections 4(i) and 719 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 620, and § 1.3 of the Commission's rules, 47 CFR 1.3, and § 64.610(f)(2) of the Commission's rules is conditionally waived to permit NDBEDP certified programs to submit claims for reimbursement more frequently than once every six months as required by § 64.610(f)(2) of its rules and to submit reimbursement claims up to one time each month.

10. This action is taken under delegated authority pursuant to §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141, 0.361.

FEDERAL COMMUNICATIONS COMMISSION

Karen Peltz Strauss,
Deputy Chief, Consumer and Governmental Affairs Bureau.

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